

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 23, 2014**

Members Present: Clayton M. Harrison, Chairman
Christopher Graham, Vice Chairman
Gerald Coutinho
Gary Simmons
Larry Kidney
Heather Salva, Clerk
Also present: Ralph Souza, Building Inspector
Absent: Donna Lambert

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

Thomas E. Borden – RE: Applicant is seeking a variance to convert an existing garden center store into a one-bedroom dwelling at 600 Sanford Road (part of 332 Briggs Road). The property is shown on Assessor's Map 29, Lot 2.

The public hearing was called to order at 7:00 P.M. with Chairman Harrison reading aloud the Public Hearing Notice. Chairman Harrison explained the procedure for the hearing; first, the applicant would present their petition and then input would be taken from the abutters. Anyone wishing to speak must identify themselves by name and address.

Mr. Borden stated that he was before the Zoning Board back in May, 2012 but at that time, he requested and received a withdrawal without prejudice. Mr. Borden stated this is the same petition again. Mr. Borden stated he has rented the greenhouse twice but his renters can't compete with the big box stores such as Lowe's, etc. Mr. Borden stated he even discounted the rent but businesses just don't survive. The property is located in a residential area. Mr. Borden stated he would like to convert the garden center store into a one-bedroom single family residence. The property does have it's own well.

Mr. Harrison acknowledged the denial letter from the Building Inspector dated March 10, 2014 and read the letter into record. Mr. Harrison also noted that a number of pieces of material was submitted, including pictures for the Board's information and review.

Mr. Souza stated he issued the denial letter due to the deficiency of lot size by 9,092 sq.ft. Mr. Souza also noted that the structure in question was detached from the existing two-family dwelling. Mr. Borden stated the property has frontage on Freedom Court and 100 ft. on Briggs Road. It was noted that Freedom Court subdivision was started in 2004 and completed in 2005. Mr. Graham asked Mr. Borden is there was a tenant in the existing two-family; Mr. Borden replied yes. Mr. Coutinho stated that in changing the greenhouse, would this create a third house? Mr. Souza stated on the property now is a duplex and a garden shop, which is what he is asking to convert to a single family dwelling. The buildings are detached.

Mr. Coutinho stated for the record, he did not want Article 7.0 to be an issue; especially in the future should there be another Building Inspector other than Mr. Souza. Mr. Souza stated there will be no issue.

Mr. Coutinho asked Mr. Borden, that if this is approved, would he maintain the greenhouses. Mr. Borden stated no, he would be dismantling them. Mr. Borden noted that the garden center was built on an existing stone foundation in 2006.

Christopher Michaud, abutter at 1 Swan Pond Path stated that Mr. Borden subdivided his land and the Town has a bylaw that should be abided by in order to keep the character of the neighborhood. Mr. Michaud stated that he took issue with the fact that during the subdivision, a 9,000+ sq.ft. area was not considered. Mr. Michaud stated that he has not heard so far, under MGL Chapter 40A, Section 10 any criteria to fit the granting of a variance. Mr. Michaud stated that a variance can only be granted without causing detriment to the neighborhood. The lot was created sometime in 2003/2004, that is when the 9,000+ sq.ft. should have been accounted for. This property is in view of my house, particularly at this time of the year. Mr. Michaud stated the Town should not suffer because of someone's oversight. Mr. Coutinho asked Mr. Michaud, if he found that changing the garden center to a residence more of a detriment than having a business in the neighborhood. Mr. Michaud stated that he could have lived in Fall River if he wanted density; he has no problem with a business being there. Mr. Michaud stated he has lived for 42 years in the same area and the bylaw and MGL should apply; there is nothing being presented tonight that says this application has merit.

At this time, Mr. Harrison read into the record the letter received from Mr. Borden dated January 10, 2014.

Mr. Graham asked Mr. Borden what the current zoning was for his property. Mr. Borden stated it was rural/residential/agricultural. Mr. Coutinho questioned the shape of the lot. Mr. Borden stated it is shaped due to the fact of having created a hammerhead lot. Mr. Coutinho questioned if the existing house was originally a two-family. Mr. Borden stated the prior owner built the house and then added on in 1980. The second unit is located over the garage and is rented to non-family; the entrance to the property is from Briggs Road, except for the greenhouses. Mr. Borden stated he has only tried to preserve a piece of property in Westport and to keep it looking beautiful; he used a foundation that is close to 100 years old for the garden shop and did not go beyond the lines. He will not make this property look bad. Mr. Michaud stated there is no arguing that the structure Mr. Borden built is pleasing to the eye and to the character of the neighborhood; there is no problem with what is there. Mr. Michaud again stated he only wants to see the bylaw's intent upheld. Mr. Michaud stated he subdivided his property and if by chance, due to poor planning, he miscalculated, there is no reason the Town should have to suffer. This property does not predate the subdivision bylaw. Mr. Coutinho stated that if that had happened to him, then he would have the right such as Mr. Borden to come before the Board for relief also.

Discussion continued. Mr. Coutinho stated that technically, he did not believe that Mr. Borden was expanding the dwelling and he is not looking to increase the dwelling. Mr. Harrison stated the application is for a one-bedroom dwelling. Mr. Souza stated he agreed. Mr. Coutinho stated the two-family is done; we are looking at a request to change the use of a building without increasing the size. Mr. Borden stated that was correct. Mr. Souza again agreed. Mr. Simmons stated the only change will be the use and the interior of the building. Mr. Coutinho stated the way to consider an increase, is if it is tacked on to the existing building, which it is not. Mr. Simmons asked Mr. Borden if there was a building on the foundation before zoning, probably 100 years ago. Mr. Souza stated the prior Building Inspector determined there was a building there, that is why he gave a building permit. Mr. Graham stated he did not believe this proposal would be more detrimental. Mr. Coutinho stated he agreed, this is not an agricultural lot anymore; and a 9x100 ft. area does not seem like a substantial shortage; agriculture has to be on the property but the greenhouses can't compete. Mr. Coutinho asked Mr. Borden if the variance is moved forward, what is the hardship in addition to financial. Mr. Borden stated the shape of the lot, it is an odd-shape and farming can't be done on it, there is not enough room.

Mr. Harrison stated that a letter was submitted showing the history of the property for the Board members to consider. At this time, Mr. Harrison asked if there was any more questions by the Board members to the applicant and whether there was any more information the applicant wanted to present. Mr. Harrison also asked if there was any more input from the abutter.; none was received. Mr. Harrison called for a motion to close the hearing.

Motion made by Mr. Coutinho to close the hearing at 7:45 PM. Second by Mr. Kidney. The Board voted unanimously in favor.

Discussion

Mr. Coutinho indicated this is is not a violation of the bylaw or the other bylaws. This is a small building to be used as a one-bedroom living space, which will benefit the Town; the property is definitely not agricultural. The Town does need "affordable" housing, although I am not saying that is what Mr. Borden will do with it, but the market will set the price. If not granted, the Town does not want a deteriorating building, which could happen. If left as is, it has already been demonstrated with prior tenants, that a business won't make it. If allowed to be changed to a single family residence, it will not be more detrimental to the neighborhood. This is a very small area, approximately 9,000 sq.ft.; the physical shape of this property is so very different; and Mr. Coutinho stated he sees this proposal as an improvement. Mr. Coutinho stated this property could still have limited agricultural use (greenhouses) if Mr. Borden so chooses; although it would not be economically viable. Mr. Coutinho stated that if the Board considers this variance, conditions can be added such as it being a one-bedroom residence and that there is no physical expansion in the future. Mr. Souza stated the building permit application called for a one-story building with a walk-out basement. Mr. Borden stated that the basement is for storage only with no habitable living space.

Ms. Salva stated she viewed this change of use as a good thing for the area; and there is the use of a historical foundation to consider.

Vote Taken

Motion made by Ms. Salva to grant the variance as requested with the following conditions: it is to be maintained as a one-level, one-bedroom single family residence, with no use of the basement as living space, and no expansion of the footprint in accordance with the plans submitted. The Board does not find this proposal to be more detrimental to the neighborhood and in addition to a financial hardship, the shape of the land also presents a hardship. The Building Inspector must approve all future building permit applications that are presented for this property. Second by Mr. Graham. The Board voted unanimously in favor.

Other Business – None.

Correspondence – None.

Motion made by Ms. Salva to adjourn the meeting at 8:03 PM. Second by Mr. Graham. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted, Diane Pelland
Diane Pelland, Principle Clerk to the Zoning Board of Appeals

APPROVED: Heather L. Salva
Heather Salva, Clerk of the Board